



December 12, 2002

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Ex Parte Presentation in the Matter of Review of CC Docket No. 01-338,
Review of the Section 251 Unbundling Obligations of Incumbent Local
Exchange Carriers; and CC Docket No. 96-98, Implementation of the Local
Competition Provisions of the Telecommunications Act of 1996**

Dear Ms. Dortch:

NewSouth takes this opportunity to respond to arguments that the Commission should preclude access to unbundled DS-1 loops and transport, and loop/transport combinations known as enhanced extended loops (EELs), in any Metropolitan Statistical Area (MSA) in which a BOC has obtained pricing flexibility, or where alternative providers are collocated only on one end of a circuit. NewSouth submits evidence that hinging the availability of UNEs on such tests masks impairment to a significant extent. The evidence shows that NewSouth would be impaired without access to unbundled dedicated transport because there are no alternative transport providers in a significant number of wire centers from which NewSouth currently relies on loop/transport combinations. This evidence underscores the need to assess impairment based on the actual availability of alternatives on a wire center-by-wire center basis.

I. A Pricing Flexibility Test Would Mask Actual Impairment

In recent submissions, Verizon proposes that DS-1 transport and loop facilities (whether lit or dark) should be conclusively *unavailable* in areas where the Commission has granted pricing flexibility relief.^{1/} Quite correctly, the Commission has previously rejected this approach.^{2/} The showing necessary to obtain pricing flexibility sheds little, if any, light on the question of whether a carrier would be impaired without access to DS-1 loops or DS-1 transport or EELs, particularly when such facilities are used to provide services other than "special access services."^{3/} In fact, a pricing flexibility trigger masks the significant impairment that carriers like NewSouth face in absence of unbundled transport and EELs. Verizon's proposal to use pricing

^{1/} See e.g., Verizon October 16, 2002, ex parte; Verizon October 22, 2002 ex parte. See also Qwest Comments at 32.

^{2/} *UNE Remand Order*, n. 673.

^{3/} The Commission defines special access services as services that "employ[] dedicated, high-capacity facilities that run directly between the end user, usually a large business customer, and the IXC's point-of-presence." Supplemental Order Clarification, 15 FCC Rcd 9587, n. 36 (2000).

flexibility as a proxy for impairment is the antithesis of the type of careful, granular fact-finding that should precede any decision to preclude access to an unbundled network element.

Carriers typically obtain pricing flexibility under the revenue-based portion of the pricing flexibility test. Under this test, carriers may obtain relief by showing that at least one unaffiliated carrier using non-RBOC transport has collocated in wire centers generating specified percentages of revenues from dedicated transport and special access services. As a result, carriers may obtain pricing flexibility relief for MSAs in which the vast majority of wire centers have no competitive collocated carriers at all.^{4/} In the BellSouth territory, where NewSouth operates, BellSouth has sought and obtained pricing flexibility based on extremely limited showings of competitive entry. In some MSAs, BellSouth seeks pricing flexibility based on the presence of just one entrant. The table below offers a sample of the limited extent of competitive entry BellSouth has proffered to obtain relief.

Table 1
Extent of Competitive Entry in BellSouth MSAs^{5/}

MSA	Total WCs	WCs w/ Collocators	Collocators With Non-BellSouth Entrance Facilities in the MSA	Number of WCs w/4 or more Collocators ^{6/}
Evansville	4	1	1	0
Lexington	7	1	1	0
Kentucky Outside MSAs	130	3	3	0
Owensboro	9	1	1	0
Clarksville	12	2	2	0
N. Carolina Outside MSAs	57	5	8	1

The BOCs contend that the lack of collocators in the majority of wire centers is not important because CLECs concentrate in the wire centers with the most special access revenues. As demonstrated below, this is simply not the case, at least not for NewSouth. NewSouth serves customers subtending a large number of wire centers in an MSA. The vast majority of these wire centers have no alternative transport providers, based on the evidence submitted in BellSouth's pricing flexibility petitions.^{7/}

^{4/} See e.g., WorldCom October 30, 2002 *ex parte* at 4 (noting that 86% of BOC wire centers are not served by any competitor at all; only 4% of BOC wire centers are served by three or more competitors).

^{5/} Taken from Petition for Pricing Flexibility For Special Access and Dedicated Transport Services, BellSouth, filed August 2, 2002) ("BellSouth Second Pricing Flexibility Petition"), Attachment 3, Required Collocator Demonstration by MSAs.

^{6/} NewSouth concurs in the view that dedicated transport should not be unbundled in any wire center that does not have at least four alternative carriers capable of providing service from that wire center to required destination). See, e.g., Allegiance Reply Comments at 18-24 (explaining that the presence of at least four non-ILEC providers substantially lessens the threat of anticompetitive conduct); WorldCom Reply Comments at 126-27 (explaining the need to have at least four alternative carriers providing transport from a wire center before eliminating unbundled transport).

^{7/} NewSouth only provides service in the BellSouth states and thus confines its analysis to BellSouth territories.

To illustrate this point, NewSouth prepared the following tables identifying wire centers from which NewSouth serves customers using DS-1 loops in a sample of MSAs. The information on wire center codes, names and number of collocators is taken directly from BellSouth's pricing flexibility petitions for the identified MSAs. NewSouth has added to BellSouth's information a column identifying whether NewSouth leases DS-1 loops from BellSouth at a particular wire center. In each of these MSAs, NewSouth is collocated in only one or two of the wire centers. In all other wire centers from which NewSouth leases DS-1 loops, NewSouth relies on BellSouth transport facilities, typically EELs, to transport traffic to a wire center in which NewSouth is collocated.

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Table 2
Greenville, South Carolina MSA^{8/}

MSA	Wire Center (WC) CLLI	WC Name	Collocators with Non BellSouth Entrance Facilities (EF)	NewSouth Leased DS-1 Loops*
			No.	
Greenville-Spartanburg, SC	SPBGSCMA	SPBG MAIN	2	Yes
Greenville-Spartanburg, SC	GNVLSCDT	GREENVILLE D&T	1	Yes
Greenville-Spartanburg, SC	GNVLSCWR	GNVL WOODRUFF RD	1	Yes
Greenville-Spartanburg, SC	LYMNSCES	LYMAN MAIN	1	Yes
Greenville-Spartanburg, SC	SPBGSCWV	SPBG WESTVIEW	1	Yes
Greenville-Spartanburg, SC	BLRGSCMA	BLUE RIDGE MAIN	0	Yes
Greenville-Spartanburg, SC	CENTSCWS	CENTRAL MAIN	0	Yes
Greenville-Spartanburg, SC	CLSNSCMA	CLEMSON MAIN	0	Yes
Greenville-Spartanburg, SC	ESLYSCMA	EASLEY MAIN	0	Yes
Greenville-Spartanburg, SC	FNVLSCMA	SPBG FINGERVILLE	0	No
Greenville-Spartanburg, SC	GNVLSCBE	GNVL BERE A	0	Yes
Greenville-Spartanburg, SC	GNVLSCCH	GNVL CHURCHILL	0	Yes
Greenville-Spartanburg, SC	GNVLSCCR	GNVL CRESTWOOD	0	Yes
Greenville-Spartanburg, SC	GNVLSCWE	GNVL WEST	0	Yes
Greenville-Spartanburg, SC	GNVLSCWP	GNVL WARE PLACE	0	Yes
Greenville-Spartanburg, SC	GRERSCMA	GREER MAIN	0	Yes
Greenville-Spartanburg, SC	LBRTSCMA	LIBERTY MAIN	0	Yes
Greenville-Spartanburg, SC	LYMNSCIP	LYMAN IND PARK	0	Yes
Greenville-Spartanburg, SC	MRTTSCMA	TRRS SLATER MARIETTA	0	Yes
Greenville-Spartanburg, SC	PCKNSCES	PICKENS MAIN	0	Yes
Greenville-Spartanburg, SC	SPBGSCBS	SPBG BOILING SPRINGS	0	Yes
Greenville-Spartanburg, SC	SPBGSCCV	SPBG CONVERSE	0	Yes
Greenville-Spartanburg, SC	SXMLSCMA	SIX MILE MAIN	0	No
Greenville-Spartanburg, SC	TRRSSCMA	TRAVELERS REST MAIN	0	Yes

* NewSouth is collocated in two of the Wire Centers

^{8/} Taken from Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, filed by BellSouth on August 24, 2000, (First BellSouth Pricing Flexibility Petition), Attachment 3, Required Collocation Demonstrations by MSAs, at p. 88 (public version).

Table 3
Asheville, North Carolina MSA^{9/}

MSA	Wire Center (WC) CLLI	WC Name	Collocators with Non BellSouth Entrance Facilities (EF)	NewSouth Leased DS-1 Loops*
			No.	
Asheville, NC	AHVLNCOH	AHVL-O-HENRY	2	Yes
Asheville, NC	AHVLNCBI	AHVL-BILTMORE	0	Yes
Asheville, NC	AHVLNCOT	AHVL-OTEEEN	0	Yes
Asheville, NC	ARDNNCCE	ARDN-CENTRAL	0	Yes
Asheville, NC	BCMTNCCE	BLACK MT-CENTRAL	0	Yes
Asheville, NC	ENKANCMMA	ENKA-MAIN	0	Yes
Asheville, NC	FRVWNCMA	FAIRVIEW-MAIN	0	No
Asheville, NC	LCSRNCMA	LEICESTER-MAIN	0	No
Asheville, NC	SWNNNCMA	SWANNANOVA-MAIN	0	No

* NewSouth is Collocated in one of the Wire Centers

Table 4
Raleigh, North Carolina MSA^{10/}

MSA	Wire Center (WC) CLLI	WC Name	Collocators with Non BellSouth Entrance Facilities (EF)	NewSouth Leased DS-1 Loops*
			No.	
Raleigh, NC	RLGHNCHO	RLGH-NEW HOPE	6	Yes
Raleigh, NC	CARYNCCE	CARY-CENTRAL	5	Yes
Raleigh, NC	RLGHNCMO	RLGH-MORGAN	5	Yes
Raleigh, NC	RLGHNCGL	RLGH-GLENWOOD	4	Yes
Raleigh, NC	CPHLNCRO	CHAPEL HILL-ROSEMARY	2	Yes
Raleigh, NC	CARYNCWS	CARY-WESTON	1	Yes
Raleigh, NC	RLGHNCJO	RLGH-JONES FRANKLIN	1	Yes
Raleigh, NC	RLGHNCSE	RLGH-SIX FORKS	1	Yes
Raleigh, NC	APEXNCCE	APEX-CENTRAL	0	Yes
Raleigh, NC	KNDLNCCE	KNIGHTDALE-CENTRAL	0	Yes
Raleigh, NC	RLGHNCDO	RLGH-AIRPORT	0	Yes
Raleigh, NC	RLGHNCGA	RLGH-GARNER	0	Yes
Raleigh, NC	RLGHNCSE	RLGH-SUNNYBROOK	0	Yes
Raleigh, NC	WNDLNCPI	WENDELL-PINE	0	No
Raleigh, NC	ZBLNCCE	ZEBULON-CENTRAL	0	No

* NewSouth is collocated in two of the wire centers.

^{9/} Taken from First BellSouth Pricing Flexibility Petition, Attachment 3, at 31.

^{10/} Taken from First BellSouth Pricing Flexibility Petition, Attachment 3, at 34.

Table 5
Greensboro, North Carolina MSA^{11/}

MSA	Wire Center (WC) CLLI	WC Name	Collocators with Non BellSouth Entrance Facilities (EF)	NewSouth Leased DS-1 Loops*
			No.	
Greensboro, NC	GNBONCEU	GNBO-EUGENE	6	Yes
Greensboro, NC	GNBONCAS	GNBO-ASHLAND DR.	5	Yes
Greensboro, NC	WNSLNCFI	WNSL-FIFTH ST.	5	Yes
Greensboro, NC	GNBONCAP	GNBO-AIRPORT	1	Yes
Greensboro, NC	GNBONCLA	GNBO-LAWNDALE	1	Yes
Greensboro, NC	WNSLNCLE	WNSL-LEXINGTON	1	Yes
Greensboro, NC	WNSLNCVI	WNSL-VINEYARD	1	Yes
Greensboro, NC	GNBONCHO	GNBO-MT. HOPE	0	No
Greensboro, NC	GNBONCMC	GNBO-MCKNIGHT MILL	0	Yes
Greensboro, NC	GNBONCPG	GNBO-PLEASANT GRDNS	0	Yes
Greensboro, NC	JULNNCMA	JULIAN-MAIN	0	No
Greensboro, NC	MNTINCMA	MONTICELLO-MAIN	0	No
Greensboro, NC	SRFDNCCE	SUMMERFIELD-CENTRAL	0	No
Greensboro, NC	WNSLNCAR	WNSL-ARCADIA	0	Yes
Greensboro, NC	WNSLNCCL	WNSL-CLEMMONS	0	Yes
Greensboro, NC	WNSLNCGL	WNSL-GLENN AVE.	0	No
Greensboro, NC	WNSLNCWA	WNSL-WALLBURG	0	Yes
Greensboro, NC	WNSLNCWP	WNSL-WHITAKER PK	0	No

* NewSouth is collocated in two of the wire centers.

These tables demonstrate that NewSouth provides service to customers using DS-1 loops from a large number of wire centers in an MSA, not just the few wire centers that generate significant amounts of special access revenues and which form the basis for pricing flexibility relief. NewSouth relies on BellSouth EELs, or special access services when EELs are not available, to carry traffic from each of the wire centers from which NewSouth leases DS-1 loops to a wire center in which NewSouth is collocated. As BellSouth's pricing flexibility evidence shows, there are no alternative transport providers in the majority of the wire centers in which NewSouth leases DS-1 loops. NewSouth is thus impaired in its ability to provide service to its customers without continuing access to BellSouth unbundled transport to reach NewSouth's collocation arrangements.^{12/}

The evidence provided in the tables above underscores the importance of assessing impairment at the wire center level. Simply assuming that alternatives exist throughout an MSA based on a successful petition for pricing flexibility, or simply tallying the total number of collocators in an MSA as BellSouth recently did,^{13/} paints an incomplete and distorted picture of impairment. Only after assessing the actual availability of alternatives in a wire center can the question of impairment be reasonably answered.

^{11/} Take from First BellSouth Pricing Flexibility Petition, Attachment 3 at 33.

^{12/} From the collocation arrangement, NewSouth leases transport from BellSouth, or, in a handful of instances a third party, to connect to a NewSouth switch.

^{13/} BellSouth November 25, 2002 ex parte.

Nor is the picture made substantially clearer by assessing the availability of alternatives at only one end of the circuit, as Verizon also proposes.^{14/} Carriers have already demonstrated the problems with a transport test that looks at only one end of a circuit.^{15/} The evidence set forth above further highlights the problem with this approach. Take the Ashland MSA, table 3, as an example. Only one of BellSouth's nine wire centers in the MSA has two or more collocators – there are no collocators with transport facilities in any of the other wire centers, according to BellSouth's evidence. Assuming NewSouth is also collocated in the same wire center as the two other collocators,^{16/} NewSouth would be denied access to unbundled transport between that wire center and the five other wire centers in that MSA in which NewSouth leases DS-1 loops, even though no alternative transport provider is collocated in any of those other five wire centers. A test that only looks at the existence of collocators at one end of the circuit could force NewSouth to abandon the customers subtending those five other wire centers.

II. Pricing Flexibility Should Not Be Used As a Trigger To Eliminate Access to Unbundled Loops

As bad as Verizon's proposed tests are for unbundled transport, they are even worse for unbundled DS-1 loops. Verizon proposes that, like transport, DS-1 unbundled loops be unavailable in any area where a BOC has obtained pricing flexibility. Pricing flexibility is even less of an indicator of the ability of carriers to either self-provision loops or obtain loops from third parties than it is for transport. BOCs can obtain pricing flexibility for the loop portion of special access circuits, called channel terminations, without any demonstration at all concerning the extent to which any carrier has actually self-deployed loops or makes loops available to third parties. BOCs obtain pricing flexibility for channel terminations by simply showing that at least one facilities-based collocator is located in wire centers accounting for a higher percentage of special access revenues. There is no inquiry or showing required as to whether that collocator has actually deployed loops to the end user customers as opposed to, for example, entrance facilities to an IXC or CLEC switch. Thus, obtaining pricing flexibility, even for channel terminations, cannot be used as a proxy for actual loop deployment by competing carriers.

Indeed, using pricing flexibility for loop deployment runs counter to the evidence in the record. Although the BOCs have claimed that CLECs serve their big business customers overwhelmingly with their own loop facilities, there is no evidence in the record to support this contention. The BOCs' claim is based on assuming that any CLEC business customer not served by UNE loop was served by a CLEC-deployed loop. In their supplemental fact report, the BOCs now admit that they counted facilities leased from BOC special access tariffs as "self-deployed loops."^{17/} The record submitted in this proceeding provides overwhelming evidence that, in fact,

^{14/} See Verizon October 16, 2002 ex parte at 15 (proposing that DS-1 transport should not be available "where there are two or more collocated facilities-based competitors in wire centers on either of the end points of a given circuit").

^{15/} See, e.g., Covad August 27, 2002 ex parte; Allegiance September 12, 2002 ex parte.

^{16/} Since NewSouth has no transport facilities of its own, it cannot be counted as one of the collocators for pricing flexibility purposes.

^{17/} See UNE Rebuttal Report 2002 at 45 (filed October 23, 2002).

there has been virtually no self-deployment of DS-1 loops.^{18/} This record evidence should put to rest BOC contentions that DS-1 loops are “suitable for competitive deployment” and hence need no longer be made available as an unbundled network element.

Verizon also assumes that customers being served with DS-1 loops have the same characteristics as customers using special access services to connect to long distance platforms, that is, they are concentrated, high volume users. There is also no evidence in the record to support this contention. It certainly does not reflect the customer base to which NewSouth markets its integrated services over DS-1 circuits. As the tables above show, NewSouth provides DS-1 circuits to customers scattered throughout an MSA. Moreover, NewSouth has previously placed information on the record demonstrating that its average DS-1 customer utilizes 17 voice or voice and data channels. Prior to switching from the ILEC to NewSouth, the vast majority of these customers were obtaining analog service. The customers NewSouth serves with DS-1 loops hardly fit the description of large-volume users of special access services.

Verizon’s alternative proposal to eliminate DS-1 loops fares no better. Verizon would also make DS-1 UNE loops conclusively *unavailable* where there are two or more collocated facilities-based competitors in a wire center *or* where a given customer or another customer at the same location already is being served by a competing carrier using its own facilities or the local ILEC’s (or another carrier’s) special access services. Verizon’s test does not require an examination of whether the collocated carriers are using their own facilities for loops. At a minimum, such a test would have to determine whether the collocated facilities-based carriers provide DS-1 circuits to end users over their own (or third party) DS-1 loops to the locations that NewSouth seeks to serve. That at least would provide some evidence that self-provisioning is possible, at least for carriers with resources comparable to the collocators. As the Supreme Court has noted, however, smaller carriers may need access to costly-to-duplicate facilities even when carriers with much greater resources may find it economical to self-provision such facilities.^{19/}

Verizon’s alternative proposal – that DS-1 loops be unavailable if any customer on the same premises is served by special access services -- is even more egregious. The availability of special access services has never been considered evidence of lack of impairment for reasons previously articulated by the Commission and numerous parties in this proceeding. Moreover, Verizon’s test would enable BOC’s to bootstrap their refusal to provide UNEs – and, thus forcing carriers to use special access facilities – as a basis to demonstrate UNEs should not be unbundled.

^{18/} See, e.g., CCG Consulting Report on the State of CLEC competition (filed July 17, 2002) (survey of 20 different CLECs in six representative markets showed virtually no self-provisioning of DS-1 loops); WorldCom October 29, 2002 ex parte at 2 (over 90% of DS-1 last-mile facilities are obtained from ILECs); TDS Metrocom Reply Comments, Jenn. Aff. ¶ 4 (provisions just over 9% of business lines over own loops); Eschelon Comments at 21 (94% of T-1 lines obtained from ILECs); NewSouth October 28, 2002 ex parte at 10 (none of NewSouth’s 8,659 DS-1 loops are self-provisioned or obtained from a third party).

^{19/} *Verizon Communications v. FCC*, 122 S.Ct. 1646, 1672 n. 27 (2002).

The Commission should reject the overbroad tests proposed by Verizon and other BOCs. As the information provided herein highlights, an assessment of the actual alternatives available on a wire center-by-center basis must be conducted before precluding unbundled access to DS-1 loops and transport and EELs.

Very truly yours,

/s/

Jake E. Jennings

NewSouth Communications

cc: Michelle Carey
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